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Michael W. Mengis

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CONFLICT OF LAWS: INSURANCE

The area of insurance presents a unique problem in the law of conflict of laws, since by its nature, insurance blends contract principles with those of tort. For instance, for a plaintiff to recover in a personal injury action from an insurance company for the actions of the insured, it must be proven, first, that the insured is liable for the plaintiff's injuries and, second, that the insurance contract provides coverage for that liability. Choice of law questions often arise in such cases, because the place of the contract and the place of the accident often are not the same.

The issue becomes more complicated when the role of insurance in modern society is recognized. Many states require motorists to carry a certain amount of both liability and uninsured motorist coverage, and most people carry other policies of insurance to cover other risks. In response to the far-reaching impact of insurance, states have heavily regulated the insurance industry¹ in order to protect not only the purchasers of insurance, but also those who benefit from its purchase, e.g., victims of traffic accidents.

States have an intense and compelling interest in regulating contracts of insurance which are executed, or have some other impact, within their borders.² The mobility of our society, however, unavoidably brings these interests into direct competition. Traditional conflicts rules such as *lex loci delicti* and *lex loci contractus* have proven inadequate in their failure to take into account the interests of all the involved states.³ As a result, many courts have turned to modern choice-of-law methodologies, including the so-called "interest analysis" which purports to resolve conflicts problems by evaluating the competing concerns of all involved states. Interest analysis, however, does not always provide satisfactory solutions.⁴

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1. Louisiana insurance law is contained in La. R.S. 22:1 to :3009 (1978 & Supp. 1987).

2. In Louisiana, this policy is stated in La. R.S. 22:2 (Supp. 1987), which states in part: "A. (1) Insurance is a business affected with the public interest and it is the purpose of this code to regulate that business in all its phases."

3. Many courts have examined the interests of the states involved. Some of these interests are discussed in *Sutton v. Langley*, 330 So. 2d 321 (La. App. 2d Cir. 1976), discussed in text accompanying and following *infra* notes 20-25. See also Restatement (Second) Conflict of Laws § 6.

4. See the discussion of *Bloodworth v. Carroll*, 455 So. 2d 1197 (La. App. 2d Cir. 1984), *rev'd*, 463 So. 2d 1313 (La. 1985), text accompanying *infra* notes 40-45.

One of the premises of this article is that the nature of the insurance contract is not conducive to the application of either pure tort or pure contract principles in toto. Rather, special rules designed to apply specifically to the problems encountered in this complex field should be adopted in order to effectuate fully the interests of competing states in protecting policy holders, victims, and insurance companies.

This article examines the two choice of law approaches used by Louisiana courts: Civil Code article 10 (the traditional *lex loci contractus* rule) and interest analysis. The traditional approach embodied in article 10 has been eroded in recent years as the more modern interest analysis has been slowly accepted as the dominant approach in Louisiana. After a discussion of methodology, different areas of insurance law will be examined in order to illustrate the problems in each approach and the various directions the courts have taken.

INTRODUCTION

The first step in choice of law, as in any area of the law, is to determine whether the case is covered by a statutory rule. The general conflicts provisions of Louisiana law are found in article 10 of the Civil Code. However, more specific provisions of the law take precedence over this article. Insurance in Louisiana is regulated by Title 22 of the Revised Statutes, and more specifically, the insurance contract is governed by Part XIV of Title 22.⁵ Many of these sections contain choice of law rules which should be applied regardless of the dictates of article 10.⁶ One such rule is contained in Louisiana Revised Statutes (La. R.S.) 22:611, which states:

The applicable provisions of this Part shall apply to insurance other than ocean marine and foreign trade insurances. This Part shall not apply to life insurance policies not issued for delivery in this state nor delivered in this state. This Part also shall not apply to any health and accident insurance policy not issued for delivery in this state nor delivered in this state except for any group policy covering residents of Louisiana regardless of from where it was issued or delivered.⁷

The rule that Louisiana law shall be applied only to policies issued or delivered in Louisiana is echoed by many other provisions of Louisiana

5. La. R.S. 22:611 to :669 (1978 & Supp. 1987).

6. La. R.S. 22:625 (1978) (additional terms which may be in an insurance policy); La. R.S. 22:659 (1978) (hospitalization benefit policies); and La. R.S. 22:663 (1978) (reduction of benefits under a group policy of accident, health or hospitalization insurance). See also the statutes cited *infra* note 8.

7. La. R.S. 22:611 (1978 & Supp. 1987).

insurance law.⁸ It does not change the *lex loci contractus* rule of article 10, as a contract of insurance is deemed formed where it is issued or delivered and the first premium is paid.⁹ Therefore, most courts have ignored the specific provisions contained in Title 22 and have simply applied article 10.¹⁰

THE JURISPRUDENTIAL INTERPRETATION OF ARTICLE 10

Since the courts have overlooked the provisions of Title 22, any examination of jurisprudential developments in this area must focus on the treatment by the courts of Civil Code article 10, which provides the general choice-of-law rule for all contracts. It states in part:

The form and effect of public and private written instruments are governed by the laws and usages of the places where they are passed or executed.

But the effect of acts passed in one country to have effect in another country, is regulated by the laws of the country where such acts are to have effect.¹¹

The article contemplates that the law of the place where the contract will have effect will apply to matters other than form. If the place of the making of the contract coincides with the place where it will have effect, then the law of that state will govern. If, however, these two determinants differ, then the second paragraph of article 10 controls, and the law of the place where the contract will have effect prevails.

Article 10 has been held to apply to insurance contracts. In *Deane v. McGee*,¹² two Florida residents were injured in Louisiana while riding as guest passengers in a Louisiana vehicle. The passengers sued, along with the host driver's insurance companies, their uninsured motorist

8. La. R.S. 22:618 (1978) (concerning the use of the insurance application as evidence); La. R.S. 22:623 (1978) (prohibiting the use of certain terms in policies delivered or issued in this state); La. R.S. 22:636.1 (1978) (defining "policy" for automobile coverage purposes as one "delivered or issued for delivery in this state"); La. R.S. 22:655 (1978) (Louisiana direct action statute); La. R.S. 22:656 (1978) (governing the payment of death claims); La. R.S. 22:657 (1978) (governing the payment of accident and health claims); La. R.S. 22:665 (1978) (relating to the choice of practitioners for visual services); and La. R.S. 22:665 (1978) (relating to the services of licensed psychologists). Such a provision is also contained in La. R.S. 22:1406 (1978) (uninsured motorists).

9. *Coci v. New York Life Ins. Co.*, 155 La. 1060, 99 So. 871 (1924). But see text accompanying and following *infra* notes 65-69 as to group policies.

10. Recently, however, the Supreme Court of Louisiana "discovered" the provisions in Title 22 and applied them rather than article 10. *Snider v. Murray*, 461 So. 2d 1051 (La. 1985).

11. La. Civ. Code art. 10.

12. 261 La. 686, 260 So. 2d 669 (1972).

carrier under a Florida policy. The Florida policy contained an "other insurance" clause¹³ which made the policy "excess insurance" in this situation. The insurance company argued, contrary to ruling of the court of appeal,¹⁴ that Louisiana law should apply in interpreting the Florida contract. Louisiana had a lower statutory requirement for uninsured motorist coverage, so the insurance company believed applying Louisiana law would reduce its exposure. The supreme court, however, found that the application of Florida law would not change the result,¹⁵ as the "other insurance" clause would be invalid under either Florida or Louisiana law. Therefore, the Florida insurance carrier would be liable for the full amount provided for by the policy, notwithstanding the minimum coverage required by Louisiana law. In other words, the contract language would govern, and the illegal clause would be considered as not written. The court found, in addition, that Florida law was correctly applied by the court of appeal. Citing article 10, the supreme court stated: "Generally the nature, validity and interpretation of an insurance contract is governed by the law of the place where made unless the parties clearly appear to have had some other place in view."¹⁶

Deane announced a clear statement of law that is easily applied. It is, in effect, the traditional theory of *lex loci contractus* embodied in the first paragraph of article 10. As noted earlier, however, that theory has come under fire. At the basis of this criticism is the claim that the mechanical application of the law of the state in which the contract was executed may not necessarily advance the policies of that state, and, moreover, may thwart the legitimate interests of other states. These shortcomings are magnified in the area of automobile insurance, since, due to the mobility of the automobile and the foreseeability of a car being used in more than one state, states other than the one in which the contract was entered into may well have an interest in applying their own law. Certainly when considering technical provisions such as procedures for cancellation,¹⁷ it may be logical to apply the law of the

13. The effect of an "other insurance" clause is that "an insured who is injured while occupying a nonowned automobile must first look to the insurer of the automobile he occupies as 'primary' insurers A person's own insurance, when he is not occupying his own automobile, . . . is considered 'excess' insurance over and above such primary insurance." *Id.* at 688, 260 So. 2d at 671.

14. The court of appeal applied Florida law and held the "other insurance" clauses in the Florida policy illegal and, therefore, not a part of the contract. This made the Florida insurance company liable to the full extent of the policy limits.

15. 261 La. at 697, 260 So. 2d at 673.

16. 261 La. at 696, 260 So. 2d at 673 (citing *Metropolitan Life Ins. Co. v. Haack*, 50 F. Supp. 55 (W.D. La. 1943)).

17. See *Chase v. Safeco Ins. Co.*, 345 So. 2d 969 (La. App. 2d Cir.), writ denied, 349 So. 2d 328 (La. 1977); *Porter v. State Farm Mut. Auto. Ins. Co.*, 342 So. 2d 1265 (La. App. 4th Cir. 1977).

place of the making, since such technicalities require a degree of certainty. In matters of interpretation, however, it may strongly be argued that the court should not be so anxious to resort mechanically to the *lex loci contractus* rule.¹⁸ Rather, greater thought and deliberation should temper the choice of law process.

INTEREST ANALYSIS

Jagers-Sutton

*Jagers v. Royal Indemnity Co.*¹⁹ is the leading Louisiana conflict of laws case, at least with respect to matters not covered by statute. In *Jagers*, a Louisiana resident brought an action in tort against her major son, who was a minor at the time of the accident, and their liability insurer. The suit involved an accident that occurred in Mississippi. It was argued that Mississippi law, which prohibited intrafamily suits, should apply. The Louisiana Supreme Court, however, ruled that the case presented a "false conflict." Since both plaintiff and defendant were Louisiana residents, the court reasoned that Mississippi would have no interest in the outcome of the case. Because of this, Louisiana could apply its own law and the plaintiff could recover. The court cited as authority the Restatement (Second) Conflict of Laws, Section 6. *Jagers* was not an insurance case, and the finding of a "false conflict" significantly limited the court's holding. Lower courts thus have been faced with the problem of determining the meaning and extent of the *Jagers* rationale. Most courts, both state and federal, have adopted the *Jagers* approach, thereby rejecting rules established by past jurisprudence.

In *Sutton v. Langley*²⁰ the second circuit extended the rationale of *Jagers* to insurance law. The court reasoned that:

In light of the modern choice of law approach taken by the Supreme Court in *Jagers* . . . [and] our evaluation of the significant relationship that Louisiana has to the transaction in the

18. "Interpretation" as used in this article is intended to denote matters that are non-procedural in the issuance of an insurance policy. For example, in determining what constitutes an intentional act under an exclusion of coverage in an insurance policy, the decision of *Pique v. Saia*, 450 So. 2d 654 (La. 1984), could be used to "interpret" what that exclusion means under Louisiana law. On the other hand, procedures such as methods of cancellation, waiver of uninsured coverage and requirements as to what must be attached to the policy are technical in nature and the need for certainty in these matters is evident. It is suggested that this inquiry would protect the interests of Louisiana while not subjecting foreign insurers to unforeseen liability. See generally the discussion of *Snider v. Murray*, 461 So. 2d 1061 (La. 1985), text accompanying and following *infra* notes 50-64.

19. 276 So. 2d 309 (La. 1973). See also *Choice of Law in Louisiana: Torts: Louisiana Conflicts Jurisprudence*, A Student Symposium, *supra* this issue at 1109, 1111.

20. 330 So. 2d 321 (La. App. 2d Cir.), writ denied, 332 So. 2d 805 (La. 1976).

absence of a choice of Texas law by the parties, we are of the opinion that Louisiana law also applies as to the interpretation of the uninsured motorist coverage.

As *Jagers* evinced willingness to abandon rigid application of the *lex loci delecti* rule of *Johnson v. St. Paul Mercury Insurance Co.*, it must also have signified the end of rigid application of the *lex loci contractus* rule of conflicts of laws.²¹

The *Sutton* court obviously read *Jagers* as a signal that the Louisiana Supreme Court would abandon article 10 in favor of more modern choice of law methods in contexts beyond that presented in *Jagers*. While some courts have limited *Sutton* to the area of uninsured motorist coverage and refused to apply it to other areas of insurance law,²² the language of *Sutton* clearly indicates a broader holding.

In *Sutton*, a Texas resident brought suit against a Louisiana resident for injuries sustained in an automobile accident which occurred in Louisiana. Joined as a defendant was the plaintiff's uninsured motorist carrier on a policy issued in Texas. In determining the applicability of the Louisiana law allowing "stacking" of uninsured motorist policies, the court examined the interests of both Texas and Louisiana. The court found that the Louisiana interests in regulating awards to persons injured on its highways, protecting those using its highways from damage by uninsured motorists and equally assessing the burden of those awards to all culpable parties outweighed the Texas interest in assuring low rates of insurance for coverage written in Texas.²³

Once the court determined that Louisiana law applied, it extended that application to all the issues before it. The court held that Louisiana law applied not only to the stacking of uninsured motorist coverage, but also to the issue of whether the insurance company had effectively cancelled the policy before the accident. The court stated simply that, having concluded "Louisiana law applies in this situation, we must examine the facts . . . with respect to the host driver's liability, the cancellation of the insurance policy by [the insurer], and the extent of uninsured motorist protection afforded plaintiffs by [the company]."²⁴ In applying Louisiana law in such a sweeping fashion, the court clearly overcompensated for the deficiencies of the traditional choice-of-law rules. Instead, the court should have examined each issue separately.²⁵

21. *Id.* at 327.

22. See, e.g., *Powell v. Warner*, 398 So. 2d 22, 24 (La. App. 4th Cir. 1981).

23. 330 So. 2d at 328.

24. *Id.*

25. As authority for examining each issue separately, see *Paull v. Zolfoghary*, 616 F. Supp. 442, 443 (E.D. La. 1985): "[T]he Court is not obliged to apply Louisiana law to the whole case and elects to deal separately with the issues"

The application of a law other than that of the place of making to such technical provisions as cancellation can be unfair to the insurer and may not advance any strong policy of the state whose law is applied. While it was reasonable for the court to apply Louisiana law to some issues, Texas law should have governed the more technical areas to protect the expectations of the insurer.

Can Article 10 and Interest Analysis be reconciled?

Judge Edwards, dissenting in *Wickham v. Prudential Insurance Co.*,²⁶ argued that the resort by Louisiana courts to "interest analysis" as contained in the Restatement (Second) "effectively read article 10 out of the law and supplanted it with a foreign treatise."²⁷ Most of the early opinions using "interest analysis" in insurance cases did in fact completely ignore the presence of Civil Code article 10. *Wickham* was an example of a later case that acknowledged the presence of article 10, but refused to apply it, choosing instead to rely on recent Louisiana jurisprudence. The first attempt to reconcile this jurisprudence with article 10 was undertaken by Judge Tate in *Bell v. State Farm Mutual Automobile Insurance Co.*,²⁸ where he stated:

In the case of an insurance policy issued in one state on an automobile that within reasonable intention will be operated in interstate travel, the law of the forum state in which an accident occurs may be deemed to be the state in which the policy was intended to have effect and to have the most significant relationship in determining the application of a standard automobile liability policy, particularly where the vehicle is principally located in such other state²⁹

Judge Tate's opinion is significant for two reasons. First, it recognizes that article 10 is still the law in Louisiana and reconciles it with the aberrant jurisprudence. Secondly, it correctly draws attention to the intent of the parties.

Under Judge Tate's reasoning, the contract is deemed to have effect in the state of the accident, and if that state has a significant relationship with the case so as to generate a sufficient interest in the litigation, "interest analysis" and article 10 lead to the same result. "Sufficient

26. 366 So. 2d 951 (La. App. 1st Cir. 1978).

27. Id. at 955 (Edwards, J., dissenting). For majority opinions which rejected the use of interest analysis as unlawfully circumventing article 10, see *Richard v. Beacon Nat'l Ins. Co.*, 442 So. 2d 875 (La. App. 3d Cir. 1983); and *Powell v. Warner*, 398 So. 2d 22 (La. App. 4th Cir. 1981).

28. 680 F.2d 435 (5th Cir. 1982), cert. denied, 459 U.S. 1088, 103 S. Ct. 572 (1982).

29. Id. at 436-37, citing *Deane v. McGee*, 260 So. 2d at 674 (concurring opinion), and Restatement (Second) Conflict of Laws § 6, at 193 (1971).

interest" under Judge Tate's "most significant relationship" test can be equated with article 10's requirement of intended "effect" in the state. In other words, the contract is "to have effect" in Louisiana only when Louisiana has sufficient interest under the above analysis.

Furthermore, Judge Tate's language serves as a reminder that the intention of the parties is an important consideration in this area. In determining the rates applicable under a policy of insurance, an insurer will examine the many risks involved in issuing such a policy. The insured pays a premium on such risks. Is it fair for a Louisiana court unilaterally to increase the amount of risk that a foreign insurer assumes? In many of the uninsured motorist cases, that is exactly what Louisiana courts have done. By increasing the limits of the uninsured motorist coverage or by allowing stacking, Louisiana courts have increased the liability of foreign insurers simply because of certain contacts with Louisiana. Nevertheless, if the insurer knew or should have known that the automobile was likely to be present in Louisiana and had the opportunity to increase the premium to cover that increased risk, it is fair that Louisiana law be applied.³⁰ Judge Tate's analysis indicates that when the contacts are such that the "most significant relationship" test is met, the insurer should have known of the likelihood of the automobile's presence in Louisiana. Under such circumstances, it would not be inequitable for the insurer to be deemed to have assumed the increased risk.

Summary

Although article 10 remains a part of the Civil Code, more often than not Louisiana courts either ignore it completely or attempt to reconcile it with interest analysis. Since neither the legislature nor the supreme court has spoken, one can only speculate as to the path the lower courts will follow. It appears, however, that interest analysis is now a part of Louisiana insurance law and is probably here to stay.

UNINSURED AND UNDERINSURED MOTORIST COVERAGE

Most of the litigation in the insurance area of choice of law involves uninsured motorist (hereinafter UM) coverage. Several cases have followed the *Jagers-Sutton* approach by applying interest analysis to UM coverage. *Browner v. Kaufman*³¹ is an example. *Browner* presented a

30. This concept is better explained when viewed in the context of *Jones v. American Fire-Indem. Ins. Co.*, 442 So. 2d 772 (La. App. 2d Cir. 1983), and *Bloodworth v. Carroll*, 455 So. 2d 1197 (La. App. 2d Cir. 1984), rev'd, 463 So. 2d 1313 (La. 1985). See text accompanying and following *infra* notes 38-45.

31. 496 F. Supp. 961 (E.D. La. 1980).

factual scenario similar to that in *Sutton*: Missouri residents injured in an accident in Louisiana sued their UM carrier on a policy issued and delivered in Missouri. The federal district court, sitting in diversity and thus compelled to apply Louisiana law under the *Erie* doctrine, found that "[t]he majority of the recent Louisiana cases demonstrate that Louisiana courts have decided to align themselves with the 'interest analysis' approach to conflict of laws."³² Based on this finding, the court chose to ignore an opinion by the United States Court of Appeals for the Fifth Circuit, *Sprow v. Hartford Insurance Co.*,³³ which had followed the *lex loci contractus* rule expressed in the earlier Louisiana case of *Deane v. McGee*.³⁴ Applying interest analysis, the court expressed basically the same rationale as did the second circuit in *Sutton* by finding that the interests of Louisiana outweighed those of Missouri.

It did not take the Fifth Circuit long to agree with the lower court's opinion in *Brawner*. Two Fifth Circuit opinions, *Bell v. State Farm Mutual Automobile Insurance Co.*,³⁵ and *Stickney v. Smith*,³⁶ affirmed the opinion that Louisiana courts have adopted the "interest analysis" approach. In *Bell*, both plaintiff and defendant were Louisiana residents, and the accident occurred in Louisiana. The defendant, however, was a Florida domiciliary militarily stationed in Louisiana, and the insurance policy was issued and delivered in Florida. Judge Tate writing for the court noted that later Louisiana jurisprudential interpretations held that insurance policies in Louisiana tort cases are governed by the "interest analysis" of *Jagers*.³⁷ *Stickney*, written by Judge Rubin, has the all too familiar fact pattern. The insurance policy was written and delivered in Michigan covering a person who was a Michigan domiciliary though stationed in Louisiana. The accident occurred in Louisiana. The court followed the reasoning in *Bell*, *Sutton* and *Brawner*, finding that the interests of Louisiana outweighed those of Michigan.

The Louisiana Second Circuit continued to apply "interest analysis" in the area of uninsured motorist coverage in the cases of *Jones v. American Fire-Indemnity Insurance Co.*,³⁸ *Wilson v. State Farm Insurance Co.*,³⁹ and *Bloodworth v. Carroll*.⁴⁰ In *Jones*, the automobile in-

32. *Id.* at 963-64.

33. 594 F.2d 1418 (5th Cir. 1979).

34. 261 La. 686, 260 So. 2d 669 (1972).

35. 680 F.2d 435 (5th Cir. 1982).

36. 693 F.2d 563 (5th Cir. 1982).

37. See text accompanying *supra* notes 28-29.

38. 442 So. 2d 772 (La. App. 2d Cir. 1983).

39. 448 So. 2d 1379 (La. App. 2d Cir. 1984).

40. 455 So. 2d 1197 (La. App. 2d Cir. 1984), *rev'd*, 463 So. 2d 1313 (La. 1985) (remanded for reconsideration in light of *Snider v. Murray*, 461 So. 2d 1051 (La. 1985), discussed at text following *infra* note 50).

volved was garaged, registered and licensed in Louisiana, though it was insured by a Texas insurance company under a policy delivered in Texas. The court stated that under these facts, an accident on Louisiana's highways could have been readily envisioned by the insurer. "[T]he mere fact that the policy was issued and delivered in Texas should not relieve the insurance company of the necessity of complying with the Louisiana UM requirements."⁴¹ *Wilson* involved a Louisiana plaintiff who sued his Texas host driver and his host driver's insurance carrier on a policy issued and delivered in Texas. After a discussion of *Jagers* and *Sutton*, the court stated that the interests of Louisiana outweighed those of Texas and applied Louisiana law.⁴² Believing that interest analysis was firmly established in the jurisprudence, the court in *Bloodworth* simply stated: "The underlying theory being that Louisiana interest in protecting victims on its highways is higher and of greater significance than the interest of the states wherein the policies were written."⁴³ Under this analysis, it seems to make little difference if the plaintiff is a Louisiana resident, as in *Wilson*, or a foreign resident, as in *Sutton*.

Jones and *Bloodworth*⁴⁴ illustrate an important problem that Louisiana courts have yet to recognize and address. In neither case did the insured reject in writing the higher uninsured limits provided for by Louisiana law.⁴⁵ In *Jones*, the insurance policy was issued in Texas and covered a fleet of cars garaged and registered in both Louisiana and in Texas. By way of contrast, in *Bloodworth*, the insurance policy was issued in Georgia, and the owner of the insurance policy was a resident of Georgia who was attending a wedding in Louisiana when the accident occurred. In both cases the Louisiana court, applying Louisiana law, found that since neither insured had rejected the higher limits of UM coverage, coverage was equal to the liability limits of the policy. In *Jones* that result may be easily justified, as the insurer was on notice that half the cars were registered and garaged in Louisiana. The insurer knew there was a likelihood that Louisiana law would apply and therefore should have protected itself under both Texas and Louisiana law. In

41. 442 So. 2d at 774.

42. 448 So. 2d at 1382.

43. 455 So. 2d at 1207.

44. The supreme court reversed the court of appeals in *Bloodworth*, instructing the lower court to re-evaluate the case in the light of *Snider v. Murray*, 461 So. 2d 1051 (La. 1985). Nevertheless, the appellate court decision in *Bloodworth* is worthy of discussion because, among other reasons, the inequities of that decision prompted the court's decision in *Snider*, discussed *infra*.

45. Louisiana requires that uninsured motorist coverage be equal to the liability coverage of the policy unless the insured rejects such limits in writing. See La. R.S. 22:1406(D)(1)(a) (1978). Louisiana also includes underinsured motorists in its definition of uninsured. Thus, when Louisiana law is applied to an out of state insurance policy, the risk of the insured is increased since its limits of liability have been increased.

Bloodworth, however, requiring the Georgia insurer to comply with the technical requirements of the Louisiana UM statute would approach the absurd. In order to protect itself adequately, the insurer would have had to comply with the technical requirements for rejection of UM coverage for all fifty states.

Does "Uninsured" Equal "Underinsured"?

Most litigation in this area arises from the scope of the definition of "uninsured motorist." Since La. R.S. 22:1406(D) includes within that definition underinsured motorists as well,⁴⁶ a Louisiana court can effectively increase the risk incurred by an insurance company in cases involving underinsured motorists. This is precisely what happened in *Wilson*⁴⁷ and *Browner*,⁴⁸ discussed above.

Many Louisiana courts, however, have refused to increase the liability of a foreign insurance company by judicially creating underinsured limits and adding them to the policies involved.⁴⁹ In some cases, the courts followed article 10 and held that Louisiana law does not apply. In other cases, such as *Snider v. Murray*,⁵⁰ the courts have concentrated on the language of section 1406(D).

The insurance policy in *Snider* was issued and delivered in Texas and covered a vehicle registered and garaged in Texas. The named insured later moved to Louisiana and was involved in an accident with an underinsured motorist. The court did not attempt to reconcile article 10 and "interest analysis," but rather looked to the precise terms of section 1406(D) and found that, since the policy was neither delivered nor issued for delivery in Louisiana, the Louisiana statute did not apply. In other words, even if the court had determined that Louisiana law was controlling, it would have been prohibited from increasing the limits of the Texas policy under section 22:1406(D)(1), since by its terms, that statute could not affect that policy. The supreme court in *Snider* relied heavily on the fourth circuit case of *Abel v. White*⁵¹ and quoted extensively therefrom.

Abel involved almost precisely the same facts as *Snider*. As in *Snider* the court found as a matter of statutory interpretation, rather than as

46. La. R.S. 22:1406(D)(2)(a) (1978).

47. 448 So. 2d 1379 (La. App. 2d Cir. 1984).

48. 496 F. Supp. 961 (E.D. La. 1980).

49. See, e.g., *Snider v. Murray*, 461 So. 2d 1051 (La. 1985); *Richard v. Beacon Nat'l Life Ins. Co.*, 442 So. 2d 875 (La. App. 3d Cir. 1983); *Abel v. White*, 430 So. 2d 202 (La. App. 4th Cir. 1983); and *Powell v. Warner*, 398 So. 2d 22 (La. App. 4th Cir. 1981).

50. 461 So. 2d 1051 (La. 1985).

51. 430 So. 2d 202 (La. App. 4th Cir. 1983).

a result of choice of law analysis, that section 22:1406(D) did not apply to the foreign insurance policy:⁵²

It was not the courts' "interpretation" that introduced underinsured motorist insurance in Louisiana: it was the legislature's enactment of La. Acts 1972 No. 137 and Acts 1974 No. 154 amending R.S. 22:1406(D). . . . The statute does not purport to apply to policies delivered elsewhere to insure vehicles registered and garaged elsewhere.⁵³

The court in *Snider* noted that the question whether the legislature could have affected out of state contracts by amending section 22:1406(D) remained unanswered.⁵⁴

In *Cobb v. Burke*,⁵⁵ plaintiff argued that *Snider* only applied to section 1406(D)(1) and not to section 1406(D)(2), which provides:

For the purposes of this coverage, the term uninsured motor vehicles shall, subject to the terms and conditions of such coverage, also be deemed to include an insured motor vehicle when the automobile liability insurance coverage on such vehicle is less than the amount of damages suffered by an insured and/or the passengers in the insured's vehicle at the time of the accident⁵⁶

The first circuit refused to adopt this argument, reasoning that it would lead to undesirable and incongruous results and also would reject the natural construction of the statute.⁵⁷ *Cobb* thus reaffirms that section 1406(D) will not apply to policies issued or delivered outside the state of Louisiana.

After Snider

If the *Snider* line of reasoning were followed to its logical conclusion, none of the provisions of the Louisiana Insurance Code would apply to policies issued or delivered outside of Louisiana. Section 611 of the Insurance Code defines the Code's scope and contains language similar

52. It is worth noting that the court expressly agreed with Judge Tate's analysis in *Bell* which reconciled article 10 with interest analysis. Thus, if the court had reached a choice of law issue, it presumably would have employed that approach.

53. 430 So. 2d at 205-06.

54. *Snider*, 461 So. 2d at 1053-54.

55. 469 So. 2d 1221 (La. App. 1st Cir. 1985).

56. La. R.S. 22:1406(D)(2)(b) (1978).

57. 469 So. 2d at 1222 n.2.

to that of section 1406(D).⁵⁸ Furthermore, section 636.1⁵⁹ defines the term "policy" as a policy delivered or issued in this state. These sections support the conclusion that the Insurance Code is designed to apply only to policies issued and delivered in Louisiana. *Snider's* emphasis on statutory language gives jurisprudential weight to this argument.

Snider must, however, be read in its proper context. It appears the court was attempting to solve the problem created by the *Bloodworth* case of increasing the insurer's liability for failing to comply with Louisiana law on waiver of uninsured motorist limits.⁶⁰ The *Snider* solution, however, creates new problems which must be addressed.

First, it must be recognized that "issued or delivered" cannot be equated with foreseeability. For example, it is quite possible that an insurer knows that an insured car, though covered by a foreign policy, is in Louisiana. This was the case in *Jones*⁶¹ where half of the cars covered by the Texas insurance policy were registered and garaged in Louisiana. Since the policy was not issued or delivered in this state, *Snider* would dictate that section 1406(D) would be inapplicable. That result has the effect of circumventing Louisiana law for cars that will be used primarily in Louisiana. This conclusion is borne out by the case of *Donnelly v. Greyhound Rent-a-Car*,⁶² in which a policy was issued in Florida to cover automobiles that were garaged in Louisiana as part of a rental car business. The lessee of the car was a Louisiana resident who rented the car in Louisiana. The court held that section 1406(D) could not be applied since the policy was not issued or delivered in this state.⁶³ This holding is correct in light of *Snider*, but its effect is highly undesirable. The inequitable results in *Jones* and *Donnelly* provide one reason for re-evaluating the approach taken in *Snider*.

Another problem created by *Snider* concerns the step which the court added to the choice of law inquiry. Although *Snider* does not

58. La. R.S. 22:611 (Supp. 1987) provides:

The applicable provisions of this Part shall apply to insurance other than ocean marine and foreign trade insurances. This Part shall not apply to life insurance policies not issued for delivery in this state nor delivered in this state. This Part also shall not apply to any health and accident insurance policy not issued for delivery in this state nor delivered in this state, except for any group policy covering residents of Louisiana, regardless of from where it was issued or delivered.

59. La. R.S. 22:636.1 (1978) provides: "A. As used in this chapter: (1) 'Policy' means an automobile liability, automobile physical damage or automobile collision policy, or any combination thereof, delivered or issued for delivery in this state[.]"

60. 461 So. 2d at 1053. In fact, the supreme court sent *Bloodworth* back to the court of appeals for re-evaluation in light of *Snider*. 461 So. 2d 1051 (La. 1985).

61. 442 So. 2d 772.

62. 490 So. 2d 377 (La. App. 4th Cir.), writ denied, 493 So. 2d 1220 (La. 1986).

63. Id. at 378.

affect the initial determination of which state's law is to be applied, if a court does determine that Louisiana law controls, it is then faced with the question of what Louisiana statutes apply. As noted above, it would appear that since section 611 contains the same language as section 1406(D), the entire Insurance Code is inapplicable. What law then is the court to apply? *Snider* leaves this question unanswered.

Section 1406(D) includes underinsured motorists within the definition of "uninsured" motorist. The court in *Snider* stated that this statute changed the former rule that underinsured was not included in uninsured coverage.⁶⁴ Therefore, when the court refused to apply section 1406(D), it fell back to the old definition. The court did not answer the question of what to do when there is no old rule on which to fall back. As a result, the courts are going to be forced to resort to general Louisiana civil law in the absence of any applicable insurance law, thus fostering instability in a field which demands predictability.

To base the application of a statute on the fortuitous factor of the place of issuance or delivery of the insurance policy, as does *Snider*, is to fail to consider adequately the interests of Louisiana in applying its insurance law. Those interests are reflected in Section 2 of the Insurance Code which establishes the public policy of regulating "all phases" of the insurance industry. Approached from this perspective, the terms "issued or delivered" should not necessarily preclude a finding that the legislature intended for its laws to apply to policies originating outside of Louisiana. Louisiana courts recognized this long ago in the area of group insurance. The group policy is almost always issued in a foreign state, and only a notice (as opposed to the policy itself) is sent to the insured. That fact has never stopped the Louisiana courts from applying Louisiana law to those foreign policies since they *have effect* in Louisiana. Under this approach, the courts should be free to apply the Insurance Code (including section 1406(D)) to any policy with respect to which it is foreseeable that it will have effect in Louisiana.

This inquiry would be properly formulated according to the nature of the law in question in each individual case. Thus, if a matter is "procedural or formal," a greater degree of foreseeability should be demanded before Louisiana law is applied. In *Jones*, for example, though the cars were covered by a policy issued in Texas, they were garaged in Louisiana. Louisiana, therefore, arguably had the greater interest, so Louisiana law was correctly applied. The opposite was true in *Bloodworth* where the car was merely passing through the state. On the other hand, if the matter is one of interpretation, a lesser standard of foreseeability should be required. By formulating the inquiry in this manner the interests of Louisiana will be protected without unfairly prejudicing the

64. 461 So. 2d at 1053.

rights of foreign insurers, since the intent of the parties is an integral part of determining foreseeability.

GROUP POLICIES

When the issue before the court involves a group policy of insurance, the result has been fairly uniform. In *Casey v. Prudential Insurance Co.*,⁶⁵ a life insurance policy was executed in Missouri and the premiums were paid to the insurer's agent in Missouri. The policy, which covered a Louisiana resident who had been employed in Louisiana, contained a provision that Missouri law would apply to disputes under the contract. The court held that the issuance of a certificate to the insured brought the case under section 629⁶⁶ of the Insurance Code and thus the clause designating Missouri law as controlling was void.⁶⁷

In *Scanlan v. Mutual Benefit Life Insurance Co.*,⁶⁸ the court relied heavily in its choice of law on the insurance company's failure to point out a clause in the policy stipulating the application of Mississippi law. The company raised as a defense that the policy was delivered in Mississippi and that only a certificate was issued to the Louisiana resident. The court did not cite section 629 and did not follow *Casey*, but rather stated:

[W]hen we considered that plaintiff, a Louisiana resident, was injured in this state while employed by a Louisiana employer, together with defendant's failure to show that plaintiff had any knowledge of the exclusive application of Mississippi law, we conclude that the Louisiana statute on penalties and attorney's fees is applicable.⁶⁹

65. 360 So. 2d 1386 (La. App. 3d Cir.), writ denied, 363 So. 2d 536 (La. 1978).

66. La. R.S. 22:629 (Supp. 1987) provides:

A. No insurance contract delivered or issued for delivery in this state and covering subjects located, resident, or to be performed in this state or any group health and accident policy insuring a resident of this state, regardless of where made or delivered shall contain any condition, stipulation, or agreement:

(1) Requiring it to be construed according to the laws of any other state or country except as necessary to meet the requirements of the motor vehicle financial responsibility laws of such other state or country;

(2) Depriving the courts of this state of the jurisdiction of action against the insurer; or

(3) Limiting right of action against the insurer to a period of less than one year from the time when the cause of action accrues in connection with all insurances unless otherwise specifically provided in this Code.

67. *Id.* at 1390-91. See also *Velez v. Sentry Ins. Co.*, 446 So. 2d 408 (La. App. 4th Cir. 1984); *Johnson v. Nationwide Life Ins. Co.*, 388 So. 2d 464 (La. App. 2d Cir. 1980).

68. 371 So. 2d 356 (La. App. 4th Cir. 1979).

69. *Id.* at 359.

Without saying so, it appears that the fourth circuit refused to give effect to a policy clause because of its adhesional nature. Since the certificate issued to the plaintiff contained no reference to the designation of Mississippi law as controlling, it was unfair for him to be bound by such a provision. Whatever the reasoning, however, it is clear that the Louisiana courts will apply Louisiana law when a Louisiana resident who lives and is employed in this state has an action on a group policy of insurance that was issued out of Louisiana by a foreign insurer. Aside from the statutory authority cited by the courts, it is quite clear that Louisiana has an overwhelming interest in ensuring adequate coverage under such circumstances.

In sum, consistent with the principles of interest analysis, a Louisiana court should apply Louisiana law when the property or interest covered by a group policy is present in Louisiana. An insurance company should not be able to escape the strictures of Louisiana law simply because the policy was issued in another state. Not only should Louisiana law govern the interpretation of such a policy under such circumstances, but also the nature, form and validity of the contract, since the interest protected by the policy is located in this state. The statutory provisions, such as section 626, that limit their application to policies issued or delivered in this state are inadequate in this situation. The courts, however, have recognized this deficiency and compensated for it in the area of group insurance. Sections 611 and 629 of the Insurance Code were amended in 1983 to codify this result. Group policies covering Louisiana residents, regardless of where issued, are governed by the Louisiana Insurance Code.

THE *Jagers* ANALYSIS

"Interest analysis" has also been applied in areas other than uninsured motorist law.⁷⁰ In *Wickham v. Prudential Insurance Co.*⁷¹ the court examined the formalities necessary to change the beneficiary of a life insurance policy. The policy was issued and delivered in Mississippi to a Mississippi resident, who later moved to Louisiana and, before his death, attempted to change the beneficiary. While the change would have been effective under Mississippi's rule of substantial compliance,

70. In *Armstrong v. Land & Marine Applicators, Inc.*, 463 So. 2d 1327 (La. App. 5th Cir. 1984), writ denied, 466 So. 2d 1307 (La. 1985), "interest analysis" was applied to the issue of the insurer's duty to defend. Finding a false conflict, the supreme court applied Louisiana law: "[T]he alleged injury occurred in Louisiana, purportedly by a product used for many years in Louisiana. California has no significant interest in the application of its law relative to either the duty to defend or the question of insurance interpretation." *Id.* at 1329.

71. 366 So. 2d 951 (La. App. 1st Cir. 1978).

the Louisiana requirement of strict compliance with the formalities of the policy would not have been met. Citing both *Jagers* and *Sutton*, the first circuit held that, since the newly designated beneficiary and the owner of the policy were Louisiana residents and all of the pertinent facts and events occurred in Louisiana, Louisiana had the greater interest and its law should apply.⁷²

Jagers and the Obligation to Notify the Insurer of Loss

In *Champion v. Panel Era Manufacturing Co.*,⁷³ the court applied "interest analysis" to the question of notice to the insurer of a claim under the policy. Plaintiffs brought a products liability action against the Texas defendant who carried insurance issued and delivered in Texas by a Texas insurer. The defendant, Panel Era, failed to timely notify its insurance company of the damage suffered by the plaintiffs. Under Texas law, the failure to give timely notice of the claim to the insurer constituted an absolute defense to coverage. Louisiana law demanded a showing of actual prejudice in order for the insurance company to avoid liability. The court cited *Jagers* and *Sutton* and proceeded to examine the interests of Texas and Louisiana in the litigation. Based on a finding that the defendant purposely availed itself of the Louisiana market, the court concluded that its insurance carrier should have foreseen the possibility of suit in Louisiana:

It cannot be said that this insurer was not aware that such interstate transactions would be and did take place when it issued the policy, especially since it conducted a yearly audit of the Texas manufacturer. Thus, the contemplation of the parties to the insurance contract must have been that it would have effect in any state in which the manufacturer did business and was potentially liable for damages due to doing such business.⁷⁴

This conclusion, coupled with the fact that plaintiffs and intervenors were Louisiana residents, led the third circuit to find that Louisiana interests were stronger than those of Texas. The purpose of the Texas statute was to protect Texas insurers from the collusive conduct of the insured and the plaintiff. Since the court found no indication of such tactics, the interests of Texas were adequately protected.⁷⁵

ARTICLE 10 AND CANCELLATION OF THE POLICY

Louisiana courts have also looked to article 10 in determining choice of law when faced with the issue of cancellation of an insurance policy.

72. *Id.* at 954.

73. 410 So. 2d 1230 (La. App. 3d Cir.), writ denied, 414 So. 2d 389 (La. 1982).

74. *Id.* at 1237.

75. *Id.*

In *Porter v. State Farm Mutual Automobile Insurance Co.*,⁷⁶ the court cited *Deane v. McGee*⁷⁷ for the proposition that Mississippi law applied to determine whether the policy was effectively cancelled, since the insured resided in Mississippi and the contract was entered into in that state.⁷⁸ A similar question was presented in *Chase v. Safeco Insurance Co.*⁷⁹ where the policy was written in Seattle, Washington, while the insured was serving in the United States Navy. Plaintiff was residing at his civilian address in Seattle. Again, the court cited *Deane v. McGee* to hold that the law of Washington determined whether and when the cancellation was effective.⁸⁰

THE DIRECT ACTION STATUTE

Just as *Snider* instructed Louisiana courts to look to the language of the uninsured motorist provision to determine when that statute would apply, the terms of the direct action statute have always been the focal point in determining its application: "This right of direct action shall exist whether the policy of insurance sued upon was written or delivered in the State of Louisiana or not and whether or not such policy contains a provision forbidding such direct action, provided the accident or injury occurred within the State of Louisiana."⁸¹

Webb v. Zurich Insurance Co.,⁸² involved an out-of-state airplane crash which killed the former mayor of Baton Rouge. The court examined the long historical development of the direct action statute and found that it would be "ridiculous to hold that the legislature intended . . . to deny the right of direct action to an injured resident of this state merely because the accident occurred outside of Louisiana when the policy was secured in this state."⁸³

Nevertheless, the supreme court in *Esteve v. Allstate Insurance Co.*⁸⁴ held that in order for the right of direct action to exist, either the accident must have occurred in Louisiana or the policy must have been issued or delivered in Louisiana. The plaintiff in this case was a Louisiana resident involved in an accident in Florida with a Florida resident. Since the Louisiana resident was suing on a Florida policy, neither condition was met, and therefore no right of direct action existed.

76. 342 So. 2d 1265 (La. App. 4th Cir. 1977).

77. 261 La. 686, 260 So. 2d 669 (1972).

78. 342 So. 2d at 1266.

79. 345 So. 2d 969 (La. App. 2d Cir. 1977).

80. *Id.* at 970.

81. La. R.S. 22:655 (1978).

82. 251 La. 558, 205 So. 2d 398 (1967).

83. *Id.* at 578, 205 So. 2d at 405.

84. 351 So. 2d 117 (La. 1977).

The United States Supreme Court in *Watson v. Employers Liability Assurance Corp.*⁸⁵ affirmed Louisiana's interest in providing such a direct action. In *Watson*, a Louisiana resident injured in Louisiana sued a foreign insurer directly. Because the accident occurred in Louisiana, the court determined that Louisiana had legitimate interests that outweighed those of Massachusetts (where the insurance contract had been negotiated, issued and delivered), and thus application of Louisiana law did not violate due process.

As regards choice of law, one clause of the direct action statute in particular is relevant and has been the source of controversy. The clause reads:

It is the intent of this Section that any action brought hereunder shall be subject to all of the lawful conditions of the policy or contract and the defenses which could be urged by the insurer to a direct action brought by the insured, provided the terms and conditions of such policy or contract are not in violation of the laws of this State.⁸⁶

It can be argued that this provision gives Louisiana courts the authority to apply Louisiana law to any case involving a contract of insurance in which jurisdiction is based on the long arm statute. This provision created much confusion in *Crown Zellerbach Corp. v. Ingram Industries*.⁸⁷ While the majority disagreed with the dissenters on whether a certain provision of the insurance policy involved therein violated the public policy of Louisiana, both sides accepted the proposition that the direct action statute would allow the insurer only to assert defenses that do not violate the public policy of Louisiana. Therefore, it seems that a court acquiring jurisdiction under this statute is free to apply certain aspects of Louisiana law to a wholly foreign contract of insurance as long as the jurisdictional conditions of the statute are met. The need to examine "interests" or determine the "place of the making" are not important. Thus, the direct action statute is now a vehicle for the application of Louisiana law to foreign contracts of insurance.

CONCLUSION

The choice of law provisions of the Louisiana Insurance Code are haphazard and inconsistent at best. Louisiana has an overwhelming interest in protecting those who are injured on its highways and should develop a conflict of laws system that will enable it to do so. Article 10 and the more specific provisions of the Insurance Code have simply

85. 348 U.S. 66, 75 S. Ct. 166 (1954).

86. La. R.S. 22:655 (1978).

87. 783 F.2d 1296, (5th Cir. 1986), cert. denied, 107 S. Ct. 87 (1986).

proven inadequate. While some courts have done an admirable job of reconciling article 10 with modern approaches to choice of law, it can be seen that a revision of article 10 (and parts of Title 22) is desperately needed. The area of insurance law is unique unto itself and choice of law rules concerning it should recognize the problems inherent in such specialized and regulated contracts.

Traditional rules of conflicts law, such as *lex loci contractus*, often thwart the policy concerns of the states involved with the insurance contract. The state where the contract is formed or the policy delivered is not always the state with the greater interest. Even when article 10 is reconciled with the modern approach of interest analysis, the result is not entirely satisfying. Under such reasoning, the court is generally free to use the law of the place of the accident, since in our mobile society, the insurer could have foreseen an accident in any one of the fifty states. This argument works well in the automobile insurance area, since by its nature, the automobile is mobile. However, this reasoning falls short in other areas of insurance law. It can be seen by examining and contrasting cases such as *Jones* and *Bloodworth* that Judge Tate's reasoning in *Bell* does not take into account the differing degrees of foreseeability.

In many cases, the insured is simply driving through Louisiana when he is involved in an accident. While Louisiana clearly has significant contacts with the underlying cause of action in tort in such a situation, it does not necessarily follow that a Louisiana court should tinker with the obligations and duties of the insurer to its insured under a contract issued and delivered under the laws of a sister state. The absurdity of applying Louisiana law in many of the technical areas of the contract can be seen in *Bloodworth*.⁸⁸ The liability of the insurance company was increased by five times simply because it did not follow the technical requirements under Louisiana law of waiver in issuing a Georgia insurance policy. Under this reasoning, insurance companies would have to comply with the technical provisions of all fifty states in order adequately to limit their liability under an automobile insurance policy. It is this type of case that *Snider* was intended to correct. *Snider*, however, arguably over-corrected the problem, in that, by protecting the interests of foreign states, Louisiana's interests may now go unprotected.⁸⁹

It is not suggested that a state should defer totally to the place of issuance. When applying "interest analysis" in the area of insurance,

88. While *Bloodworth* has been overruled in light of *Snider*, 463 So. 2d 1313 (La. 1985), the opinion by the court of appeals illustrates the reasoning used by some Louisiana courts.

89. See text accompanying *supra* notes 58-59.

each issue should be examined separately with regard to the interests of the forum state, the foreseeability of contact with the forum state and the interests of the parties. If it is obvious from the circumstances that the parties intended the insurance contract to cover risks present in Louisiana, then the whole of Louisiana law should apply, since the insurance company had an opportunity to increase its premium to cover the risk. The insurance company should not be able to evade Louisiana law in such circumstances simply by delivering the policy out of state. Likewise, when the property to be insured is in Louisiana, this state has a significant interest in the application of its laws and policies to the insurance contract. If it appears, however, that the insurer in no way intended the contract to reach a foreign jurisdiction, the court should be careful not to encroach on the right of the private parties to contract between themselves. The laws of the state where the policy was issued and delivered should govern the form and technical requirements of the policy. Issues relating to such matters as establishing limits of liability, requirements for cancellation and mandatory provisions should be governed by the law of the state of issuance in order that the insurance company may adequately and with a degree of certainty establish the extent of the risk incurred.

It is suggested that the courts should use the following analysis when faced with a conflict of laws problem in the area of insurance.

- I. Each issue should be examined separately in order to determine which are technical in nature and which are matters of mere interpretation.
- II. If the issue is found to be technical in nature, a high degree of foreseeability should be necessary before Louisiana law can be applied to the foreign contract. It is suggested that this test would be met only when the property interest to be insured has very strong ties to Louisiana, such as being registered or garaged here. Merely passing through the state would not be sufficient.
- III. If the issue is found to be one of interpretation, a lesser degree of foreseeability would be required for Louisiana law to be applicable. The interest of Louisiana outweighs the minimal prejudice to the insurance company in this context.

The court should be guided through this inquiry into interests and foreseeability by the *Jagers-Sutton* analysis.⁹⁰ It is submitted that this "interest analysis" is consistent with article 10, since a contract logically may be deemed to have "effect" in the most interested state. That the policy was issued or delivered in Louisiana should have little to do with the inquiry other than how the place of the making bears on the element of foreseeability. As in *Don-*

90. See text accompanying and following *supra* note 19.

nelly and *Jones*, it is possible to have a foreign policy covering property in Louisiana. The proposed analysis would not allow Louisiana policy choices to be frustrated by issuance of the policy in a foreign state.

It can be seen from the above analysis that no mechanical rule can adequately solve the problems in choice of law. The nature of the contract of insurance and the foreseeability of suit in Louisiana should all be examined by the court in determining the applicable law. While it can be argued that such a system is difficult to apply, it is certainly better than the confused and incoherent system that Louisiana courts have been forced to utilize in the past. Even though the mechanical rules often provided certainty, the result was often unjust. Choice of law should strive to give effect to the intent of the parties while keeping in mind the interest of the states involved. In doing so, the interest of justice will be served.

Michael W. Mengis